

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:08-cr-175

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

JEREMY E. LEWIS,

Defendant.

:

ORDER DENYING CERTIFICATE OF APPEALABILITY

This case is before the Court on request from the Clerk of the Sixth Circuit Court of Appeals for this Court's rulings on whether Defendant granted a certificate of appealability as to his Notices of Appeal at ECF No. 335 and 336, Sixth Circuit Case Nos. 18-3643 and 18-3645 respectively.

Rule 11 of the Rules Governing § 2255 Proceedings provides "The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant." Judgment denying relief under § 2255 was entered August 26, 2011 (ECF No. 127) and the Court later denied a certificate of appealability (ECF No. 134). Since then Lewis has filed eighteen motions for relief from judgment on various bases. Eventually the Court imposed the following sanction under Fed. R. Civ. P. 11: "Lewis is ORDERED not to file any further motions to obtain relief from judgment in this case and the Magistrate Judge is ordered to strike any such attempts

without preparing a report and recommendations.” (ECF No. 313, PageID 2035). Following that order, the Magistrate Judge struck Lewis’s June 29, 2018, motion for relief from judgment (ECF No. 332). A litigant may not appeal to the circuit court from a Magistrate Judge’s order in a non-consent case because such an order is not final. Reasonable jurists would not dispute this proposition of law and Lewis is therefore denied a certificate of appealability as to 6th Cir. Case No. 18-3645.

Lewis’s other pending appeal, 6th Cir. Case No. 18-3645, is an Order adopting the Magistrate Judge’s Report recommending imposition of Fed. R. Civ. P. 11 sanctions (ECF No. 327). Lewis never objected to that Report and has therefore forfeited his right to claim error on appeal. *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985). Reasonable jurists would not dispute this proposition of law and Lewis is therefore denied a certificate of appealability as to 6th Cir. Case No. 18-3643.

October 1, 2018.

*s/Thomas M. Rose

Thomas M. Rose
United States District Judge